

Section #. 880.15 (3) of the statutes is renumbered 54.50 (1) (d) and amended to read:

The 54.50(1)(d) CESSATION OF POWERS. I If the temporary guardianship is not sooner terminated the duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of the ward, or, if the ward is a minor, upon his becoming of age, or when it shall be judicially determined that any other disability of the temporary ward which was the cause of the temporary guardianship has terminated. Upon the termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon the termination of duties and powers, account to the court and deliver to the person or persons entitled to them all the estate of the ward in his or her hands. that Any action which has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.15; 1977 c. 354, 418, 449; 1979 c. 175; 1981 c. 379; 1995 a. 77.

expiration of the time period, or extension of the time period, specified in sub. (i) (b), or if the court sooner determines

the ward's estate over which the temporary guardian of the estate has had control

\*\*\*\* NOTE: Please review this paragraph (renumbered from s. 880.15 (3)) to ensure that it meets your intent.

End of  
NOTE

INSERT (63-8)

\*\*\*\* NOTE: If you do not want sub. (2) to be  
under s. 54.50, where do you want it to be placed?

End of NOTE

✓

INSERT 64-7 NOTE

no# Your redraft instructions are for me to

"add" this to s. 54.52; do you want me to

renumber <sup>all of</sup> s. 48.978 <sup>state,</sup> into ch. 54? There are

substantial problems of reconciliation,

including, in s. 48.978 (1)(c), state, a

definition of "incapacity" that differs

from the definition in s. 54.01 (10).

End of  
NOTE

✓

INSERT 67-13

\*\*\*\* NOTE: I replaced the term  
"deposit" with "depository accounts," and  
defined that term <sup>in s. 54.01(5)</sup> using the definition  
in s. 815.18(2)(e), stats. Is this the meaning  
you intended? I also added "of the ward's"  
in the first sentence; it's unnecessary to add  
it to the second, because the referent  
"the evidence of ... etc." suffices.

End of  
NOTE

✓

INSERT 69-8

\*\*\*\*NOTE: I think current law refers to "decedent or ward" because of the way 3.54.64 (1) is worded (guardianship continues during life of ward, etc.). I eliminated "decedent," but I'm unsure if that's the right decision. (End of NOTE)

\*\*\*\*NOTE: There is no definition of "estate" or of "property" in ch. 880, state, and I would defer to your terms

judgment as to whether the terms include

both assets and income. I have in this

subsection changed all references to "estate" or

"property" to "income or assets." Do you want

me to define "estate" for ch. 54 as including income

and assets?

End of NOTES

INSERT 69-11

(a) The ward.

(b) Any guardian ad litem appointed by the court.

(c) Any personal representative or special administrator appointed by the court.

INSERT 69-21

2. The ward.

3. The guardian.

4. The agent under the ward's power of attorney for health care under ch. 155 or durable power of attorney, if any.

5. Any other persons determined by the court.

\* \* \* \* \* The court doesn't provide this notice under ch. 155.

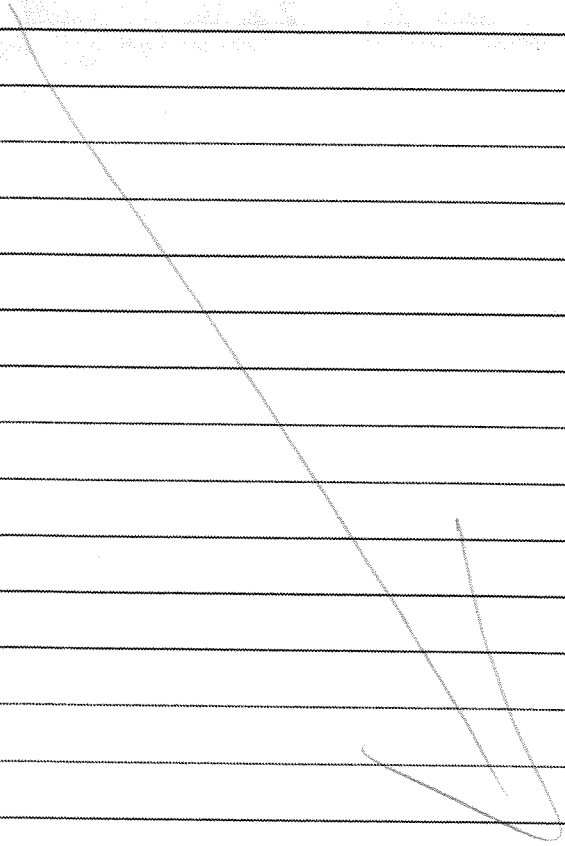
End of  
NOTE

✓

INSERT 72-L

\*\*\*\* NOTE: What if the guardian changes  
residence from this state to another state?

End of  
NOTE





Section #. 880.26 (1) (a) of the statutes is renumbered 54.64 (3) (c) and amended to read:

formerly 54.64 (3) (c) A minor ward attains his or her majority, unless the minor is incompetent.

age  
18

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.26; 1973 c. 284; 1983 a. 217; 1989 a. 307; 1993 a. 486; 1999 a. 85.

\*\*\*\* NOTE: This provision changes current law (s. 880.26 (1) (a), Stats.), which appears to continue a guardianship without other action when a minor, incompetent ward reaches age 18. Just to be sure, are you intending that an incompetent minor's guardianship <sup>of the person</sup> terminate when he or she reaches 18 and that the guardianship be re-petitioned, etc.?

End of NOTE

Section #. 880.26 (1) (b) of the statutes is renumbered 54.64(3) (d) and amended to read:

54.64(3) (d) A minor ward lawfully marries.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.26; 1973 c. 284; 1983 a. 217; 1989 a. 307; 1993 a. 486; 1999 a. 85.

\*\*\*\* NOTE: What if the minor is incompetent? (See \*\*\*\* NOTE under par. (c)?)

End of NOTE

(e) The ward dies.

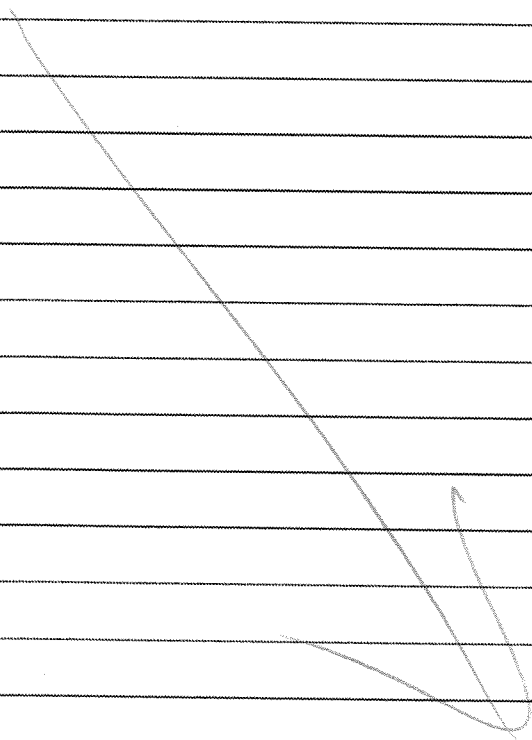


End of INSERT  
72-6

(INSERT 72-12)

\*\*\* NOTE: What if the guardian  
changes residence from this state to another  
state?

End of NOTE

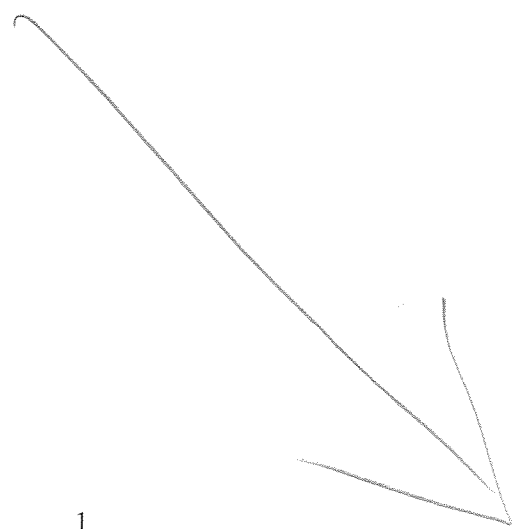


Section #. 880.26 (2) (a) of the statutes is renumbered 54.64 (4) (c) and amended to read:

54.64 ~~(4)~~ <sup>formerly</sup> (c) A minor ward attains his or her majority. <sup>age 18</sup>

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.26; 1973 c. 284; 1983 a. 217; 1989 a. 307; 1993 a. 486; 1999 a. 85.

\*\*\* NOTE: Please see the \*\*\* NOTE under 3.54.64 (3)(c).



Section #. 880.26 (2) (b) of the statutes is renumbered 54.64 (4) (d) and amended to read:

~~54.64 (4)~~ (d) A minor ward lawfully marries and the court approves the termination.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.26; 1973 c. 284; 1983 a. 217; 1989 a. 307; 1993 a. 486; 1999 a. 85.

\*\*\*\* NOTE: Please see the \*\*\*\*  
NOTE under s. 54.64 (3)(d).

Section #. 880.26 (2) (d) of the statutes is renumbered 54.64 (4) (e) and amended to read:

~~54.64 (4)~~ (e) A ward dies, except when the estate can be settled as provided by s. 880.28.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.26; 1973 c. 284; 1983 a. 217; 1989 a. 307; 1993 a. 486; 1999 a. 85.

54.66 (4)

\*\*\*\* NOTE: Have I drafted this paragraph (renumbering and amending s. 880.26 (2) (d), Stats.) as you wish? If s. 54.66 (4) applies, would the court just terminate the guardianship after the summary settlement, or do we need to provide specific authority for the court to do that?

End of INSERT  
72-12

INSERT 75-9

\*\*\* NOTE: In LRB-0039/PI, my \*\*\* NOTE  
under this paragraph <sup>in part</sup> stated that, although the memo  
specified ss. 880.192 and 880.251 <sup>, stats.,</sup> as cross-references,  
they were not otherwise touched by the proposal.

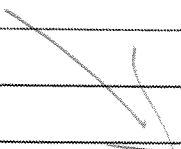
I now think that s. 880.192 <sup>, stats.,</sup> is duplicated by  
provisions in pars. (b), (d), and (e) and so  
is unnecessary; I have repealed it. Section  
<sup>, although not entirely,</sup>

880.251, stats., seems pretty well duplicated by  
sub.(2) and s. 54.18(3); I have repealed it.

Please review.

End of NOTE

6/5



INSERT 75-9

(B)  
(3) PROCEDURE. Upon the filing of a petition for review of the conduct of a guardian, the court shall hold a hearing in not less than 10; nor more than 60, days and shall order that notice of the hearing be provided to the ward, the guardian, and any other persons as determined by the court.

\*\*\* NOTE: The provision of notice is, the order.

I assume, specified in } Is "notice of the hearing"

correct, or is there additional notice of the filing of the petition? Should any of this be under s. 54.38?

End of INSERT  
75-9



(INSERT 77-14)

\*\*\* NOTE: You asked why 54.70(6m) (now  
renumbered 54.70(7)) and (9m) (now renumbered 54.70(9))  
had had odd numbering. I've been unable to figure  
out why, but it doesn't seem to have been the  
result of an underlying problem.

End of  
NOTE

INSERT 80-3

\*\*\*\* NOTE: Should anyone in addition  
to presumptive ~~heirs~~ heirs be specified in  
s. 54.76(1)? (See distribution of notice  
under s. 54.76(4).) Should any of this be in  
s. 54.38? Note that I did not draft  
"adult" - shouldn't all heirs receive notice  
(see, for example, s. 54.76(4))?

End of  
NOTE

INSERT 80-12 A

estate. An individual whose estate is  
under conservatorship may make gifts of  
his or her estate, subject to approval  
of the conservator

(INSERT 80-12 B)

\*\*\*\* NOTE. Please review the gifting language  
carefully, in light of the actual <sup>①</sup> factual situation  
and holding of Zobel v. Fenwick.

INSERT 80-18

not

A potential recipient of the notice may waive its  
receipt.

INSERT 81-3

u0#

A conservatorship may only be terminated  
under a hearing under this subsection.

INSERT 81-5

p10  
2

(5) (b) Continue the guardianship, but waive requirements for a bond for the guardian and for accounting by the guardian.

**54.66 Final accounts.**

(3) DISCHARGE. After approving the final account and after the guardian has filed proper receipts, the court shall discharge the guardian and release the guardian's bond.

\*\*\*NOTE: I wasn't sure who files the receipts under this subsection. Is my drafting accurate?

**54.68 Review of conduct of guardian. (1) CONTINUING JURISDICTION OF**

~~COURT~~ The court that appointed the guardian shall have continuing jurisdiction over the guardian. (6) (B) conservator conservatee's

no# (2) ~~CAUSE FOR COURT ACTION AGAINST A GUARDIAN~~. Any of the following, if committed by a guardian with respect to a ward or the ward's estate, constitutes cause for a remedy of the court under sub. (3): removal conservator conservatee (a) 50

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement. conservatee

(c) Abusing or neglecting the ward or knowingly permitting others to do so.

\*\*\*NOTE: This provision is from the memo.

(d) Engaging in self-dealing.

(e) Failing to adequately provide for the personal needs of the ward from available estate assets and public benefits.

(f) Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and functional capacities.

(g) Failing to act in the best interests of the ward.

INSERT 81-5

\*\*\*\* Section 54.76 (6) does not  
contain all the elements for cause for  
removal of a guardian that are specified in  
s. 54.68 (2). Please review.

End of INSERT  
81-5



INSERT 81-8 A

3. The individual whose estate is conserved dies.

4. The conservator or individual whose estate is conserved changes residence to another state.

7

\*\*\*\* NOTE: Instead of drafting s. 54.76 (4)

(a) 5. concerning the court's receipt of "notice from an interested person," I allowed anyone to file a petition under s. 54.76 (4). Please review. End of NOTE

5. The court finds cause, as specified in sub. (6), for removal of the conservator.

(b) If anyone objects to termination of the conservatorship and alleges that the individual whose estate is conserved is inappropriate for appointment of a guardian, the court may stay the hearing under par. (a) for 14 days to permit any interested person to file a petition for guardianship. If no petition

INSERT 81-8A

is filed, the court may terminate the conservatorship and may appoint a guardian ad litem for the individual.

\*\*\*\* NOTE: I did not add the authority for the guardian ad litem to contact the county Adult Protective Services unit; statutory authorization is not needed for such an action.

End of NOTE

INSERT 81-8 A/

(8) If a court terminates a conservatorship or a conservator resigns, is removed, or dies, the conservator or the conservator's personal representative shall promptly render a final account to the court and to the former conservatee, any guardian of the former conservatee, or any deceased conservatee's personal representative, <sup>for any special administrator</sup> as appropriate. If the conservator dies and the conservator and the deceased conservatee's personal representative <sup>or special administrator</sup> are the same person, the deceased conservatee's personal representative or special administrator shall give notice of the termination and rendering of the final account to all interested persons of the conservatee's estate.

INSERT 81-8 A

\*\*\*\* NOTE: This provision mirrors  
s. 54.66(1). Please review.

End of INSERT

**2003-2004 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0039/P2insPH  
DAK:cjs:pg

INSERT 81-83

**SECTION 1.** 346.06 (1) (L) of the statutes is created to read:

346.06 (1) (L) To any person who has been declared incompetent under s. 54.25

(2) (b) 1. d. to apply for an operator's license.

**SECTION 2.** 343.31 (title) of the statutes is amended to read:

**343.31 (title) Revocation or suspension of licenses after certain convictions or declarations.**

**History:** 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304; 1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399; 1989 a. 31, 105; 1991 a. 39, 277, 316; 1993 a. 317; 1995 a. 269, 425, 448; 1997 a. 84, 237, 258, 295; 1999 a. 109, 143; 2001 a. 16, 38, 109; 2003 a. 30.

**SECTION 3.** 343.31 (2x) of the statutes is created to read:

343.31 (2x) The department shall suspend a person's operating privilege upon receiving a record of a declaration under s. 54.25 (2) (b) 1. d. that the person is incompetent to apply for an operator's license. The department may reinstate the person's operator's license upon receiving a record of a declaration that the person is no longer incompetent to apply for an operator's license under s. 54.25 (2) (b) 1.d., if the person is otherwise qualified under this chapter to obtain an operator's license.

**SECTION 4.** 343.31 (3) (a) of the statutes is amended to read:

343.31 (3) (a) Except as otherwise provided in this subsection or sub. (2m) or (2x), all revocations or suspensions under this section shall be for a period of one year.

**History:** 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304; 1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399; 1989 a. 31, 105; 1991 a. 39, 277, 316; 1993 a. 317; 1995 a. 269, 425, 448; 1997 a. 84, 237, 258, 295; 1999 a. 109, 143; 2001 a. 16, 38, 109; 2003 a. 30.

440.121

Section #. 440.12 of the statutes is created to read:

440.121

(B)

incompetency

**440.12 Credential denial, nonrenewal and revocation based on tax delinquency.** Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237

issued to an individual for whom the department receives a record of a declaration under s. 54.25 (2) (c) i.d. stating that the individual is incompetent to apply for a credential under chs. 440 to 480

End of INSERT  
81-8B

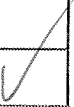
INSERT A (Part of INSERT 10-9)

**B**

(2) A court may appoint a guardian of the estate for a proposed ward if the court determines that the individual is a spendthrift.

\*\*\*\* NOTE: Although you indicate that you wish to include spendthrifts in ch. 54, no language proposed addresses the actual appointment or any standard to be used. I have created s. 54.10 (2) to begin to address this issue. Please review.

End of NOTE



(INSERT F. (part of INSERT 35-6)

\*\*\*\* NOTE: Please see the \*\*\*\* NOTE  
under subd. 1. g., above.

End of  
NOTE



(INSERT G (part of INSERT 35-6))

an operator's license, a license issued  
under ch. 29, or a credential, as defined  
in s. 440.01(2)(a),

INSERT L (part of INSERT 35-6)

and treatment and  
to the voluntary receipt by the ward of  
medication, including any appropriate  
psychotropic medication, if the guardian  
has first made a good-faith attempt to

discuss with the ward the ward's voluntary

2.a.

receipt of the psychotropic medication and the ward

does not protest. For purposes of this

subdivision (unit), "protest" means make

more than one discernible negative

response, other than mere silence, to

the offer of, recommendation for, or other

proffering of voluntary receipt of

psychotropic medication. "Protest" does

not mean a discernible negative response

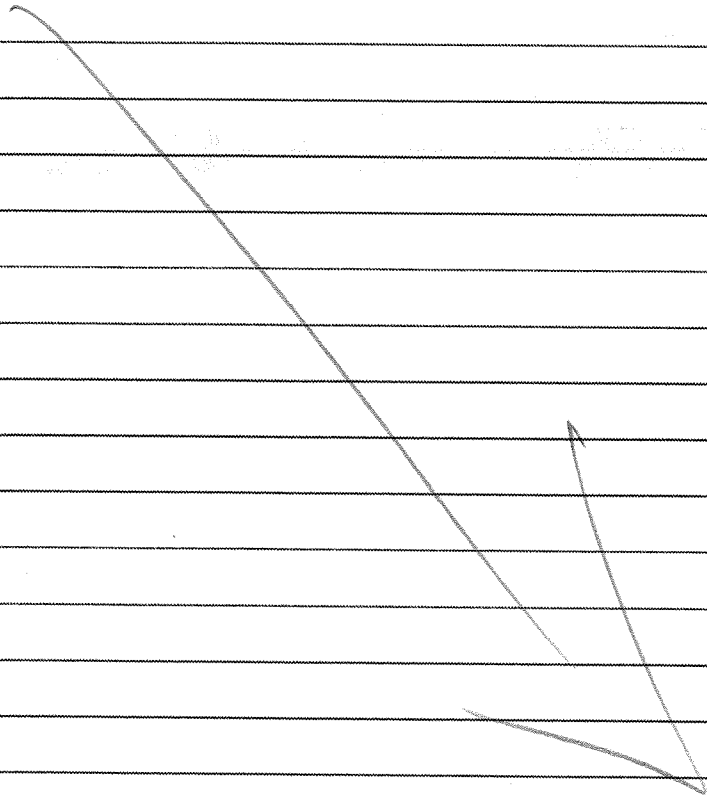
to a proposed method of administration of

[INSERT L (part of INSERT 35-6)]

no 9 the psychotropic medication. A guardian may consent to the involuntary administration of psychotropic medication only pursuant to a court order under ch. 55. In determining whether medication or medical treatment is in the ward's best interest, the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment.

INSERT X (part of INSERT 35-6)

g. The right to vote, if the court finds that the individual is incapable of understanding the objective of the elective process.



INSERT X (part of INSERT 35-6)

\*\*\* NOTE: Section 880.33(9), stats., upon which this language is based, requires that the court's determination be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925, or 6.93 with the responsibility for determining challenges to registration and voting that may be directed against that elector.

Otherwise, I think it is possible that the official or agency may have no way of knowing if the vote is countable. Do you want this requirement added to the language? This

NOTE also applies to subd. 4.

End of INSERT X

1 INSERT Y (part of INSERT 35-6)

m. The power to receive all notices on behalf of the ward.

n. The power to act in all proceedings as an advocate of the ward, except the power to enter into a contract that binds the ward or the ward's property or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the estate.

o. The power to apply for protective placement under s. 55.06 or for commitment under s. 51.20 or 51.45 (13) for the ward.

p. The power to have charge of the ward.

\*\*\*\*\* NOTE: In s. 54.25(2)(d) 2. i., m., n., o., and p., I have attempted to "weave"

INSERT Y (part of INSERT 35-6) /  
stats. ↑ ←

in the parts of s. 880.38(1) (that seemed to

fit (in LRB-0039/P1, this provision was

renumbered s. 54.25(1)(c), but it didn't

fit well there. The power to "have charge of"

the word is a change from the statutory

"have custody of"; is it an acceptable

wording change?

INSERT Y (part of INSERT 35-6)

no #

Back again to my confusion

about prohibiting the guardian of the person  
from entering into a contract that binds

the ward - what about a contract with  
a facility (e.g., a nursing home), which

requires a financial commitment? Would it be

necessary for

the guardian of the estate to sign? If the

unchanged

prohibition is, the power of the guardian of the

person to "admit a ward to certain subd.

under i.

residential facilities" is, it would seem,

significantly less than it first

appears to be.

End of  
INSERT  
Y



SUBCHAPTER II

APPOINTMENT OF GUARDIAN

**54.10 Appointment of guardian.**

(1) A court may appoint a guardian of the person or a guardian of the estate for a proposed ward if the court determines that the individual is a minor.

(2) A court may appoint a guardian of the estate for a proposed ward if the court determines that the individual is a spendthrift.

\*\*\*\*NOTE: Although you indicate that you wish to include spendthrifts in ch. 54, no language proposed addresses the actual appointment or any standard to be used. I have created s. 54.10 (2) to begin to address this issue. Please review.

8

(a)  
(3) A court may appoint a guardian of the person or a guardian of the estate,

or both, for an individual based on a finding that the individual is incompetent only if the court finds by clear and convincing evidence that all of the following are true:

1. The individual is aged at least 17 years and 9 months.

2. For purposes of appointment of a guardian of the person, because of an impairment, the individual is unable effectively to receive and evaluate information or to make a communicate decisions to such an extent that the individual is unable to meet the essential requirements for his or her physical health and safety.

3. For purposes of appointment of a guardian of the estate, because of an impairment, the individual is unable to effectively to receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that any of the following applies:

a. The individual has property that will be dissipated in whole or in part.

b. The individual is unable to provide for his or her support.

c. The individual is unable to prevent financial exploitation.

1           2. Any finding under subd. 1. that an individual lacks evaluative capacity to  
2       exercise a right must be based on clear and convincing evidence. In the absence of  
3       such a finding, the right is retained by the individual.

4           3. If an individual is declared not competent to exercise a right under subd. 1.  
5       or 4., a guardian may not exercise the right or provide consent for exercise of the right  
6       on behalf of the individual. If the court finds with respect to a right listed under subd.  
7       1. a., d., or e. that the individual is competent to exercise the right under some but  
8       not all circumstances, the court may order that the individual retains the right to  
9       exercise the right only with consent of the guardian of the person.

10          4. Regardless of whether a guardian is appointed, a court may declare that an  
11       individual is not competent to exercise the right to vote if it finds by clear and  
12       convincing evidence that the individual is incapable of understanding the objective  
13       of the elective process. If the petition for a declaration of competence to vote is not  
14       part of a petition for guardianship, the same procedures shall apply as would apply  
15       for a petition for guardianship.

\*\*\*\*NOTE: Please see the \*\*\*\*NOTE under subd. 1. g., above.

16       (d) *Guardian authority to exercise certain powers.* A court may authorize a  
17       guardian of the person to exercise all or part of any of the powers specified in subd.  
18       2. only if it finds, by clear and convincing evidence, that the individual lacks  
19       evaluative capacity to exercise the power. The court shall authorize the guardian to  
20       exercise only those powers that are necessary to provide for the individual's personal  
21       needs, safety, and rights and to exercise the powers in a manner this is appropriate  
22       to the individual and that constitutes the least restrictive form of intervention. The  
23       court may limit the authority of the guardian with respect to any power to allow the

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0039/P2dn  
DAK:cjs:ch

January 16, 2004

1. Numerous questions remain about how you wish to deal with provisions in ch. 880 that have not been addressed by your instructions. Do you intend to affect subchs. II to V (note especially subch. IV, which deals with minors and spendthrifts). Please also review the following provisions in subch. I of ch. 880, stats., that have not been affected by this bill: ss. 880.01 (intro.), (9), and (10), 880.07 (3), 880.075, 880.155, 880.157, 880.16, 880.191 (2), 880.195, 880.252, 880.253, 880.29, 880.295, 880.32, 880.33 (3), (4), (6), and (8) (intro.) and (a), and (9), 880.34 (2) and (3), and 880.37. Many of these provisions may be duplicated by language created in the bill, but some are not.
2. As part of the next version of this bill, I will add "under s. 54.10" to phrases referring to individuals who are determined to be incompetent.
3. This draft repeals provisions in ch. 880, stats., concerning psychotropic medication. It does not create replacement provisions in ch. 55, as does the Legislative Council draft WLC: 0220/P1. If the Legislative Council bill that results from WLC: 0220/P1 fails to pass, and this bill passes, there will be no procedure for administration of psychotropic medication.
4. This draft does not address numerous changes that must be made to statutes outside of ch. 880, stats., to reflect the changed numbering effected by this draft. An example is s. 19.32 (1m), stats., which refers to statutes and terms that are changed by this draft. These cross-reference changes will be included in the draft in a later version.
5. This draft includes many new \*\*\*\* Notes, some of which pose specific questions, and some \*\*\*\* Notes from the previous version which have not yet been answered.
6. An important issue that should be decided is the proposed effective date for this bill; do you intend for it to take effect on passage? (Actually, "on passage" means the day after publication by the secretary of state after the governor has signed it.)
7. Another issue is initial applicability, i.e., when the changes in law effected by the bill first apply to procedures, etc. For instance, I presume that you would not want the bill to initially apply to petitions that are in progress, because there may be due process problems that result. A common treatment is to have the bill's provisions first apply to, for instance, petitions that are filed on the bill's effective date.
8. A third issue has to do with the intersection of this bill and the Legislative Council bills modifying ch. 55, stats. (See item 2. above). One way to try to make these separate

pieces of legislation “work together” is to have them have identical, delayed effective dates (e.g., January 1, 2005), so that there is not a “gap” created in the law between the times they each pass.

9. I would like to express my deep appreciation to Betsy Abramson for the help she has provided me in sorting through the responses to LRB-0039/P1.

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